# In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 528

R. A. RIDDELL, DISTRICT DIRECTOR OF INTERNAL REVENUE, LOS ANGELES DISTRICT, PETITIONER

*v.*

MONOLITH PORTLAND CEMENT CO.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## REPLY FOR PETITIONER

We do not propose to reargue the contentions advanced in the government's petition. Two points suggested by taxpayer, however, merit brief comment.

1. In attempting to distinguish the instant case from *United States* v. *Cannelton Sewer Pipe Co.*, 364 U.S. 76, taxpayer likens it to *Dragon Cement Co.* v. *United States*, 244 F. 2d 513 (C.A. 1), which in turn falls in the same class as other decisions this Court distinguished in *Cannelton* (p. 89, fn. 10) as cases that "went off on factual concessions not present here." The factual concession in *Dragon Cement* (244 F. 2d at 517) was that there was "no commercial market" for the taxpayer's mineral (so-called

"cement rock") and that "[t]he first commercially marketable product [was] cement." In similar vein, taxpayer asserts, as a *fact* (Br. 4, 5), that its limestone is "non-marketable" (although limestone is one of the most widely marketed minerals) except to the extent that it is "salable" as cement. If this be the fact, however, it follows only that taxpayer is not entitled to any depletion allowance at all. As this Court stated in *Cannelton* (p. 88) in answering that taxpayer's contention that all of the processes it employed were necessary to obtain a "commercially marketable" mineral product, "[t]his position leads to the conclusion that respondent's mineral product has no value to it in the ground. If this be true, then there could be no depletion. One cannot deplete nothing." Under *Cannelton*, accordingly, the taxpayer's limestone either is a "commercially marketable" mineral product without being made into cement or the mineral has no value to be depleted.

2. Although cement is a manufactured product, as both courts below recognized (R. 171; Pet. 26–27), taxpayer persistently refers to its "deposit (cement)" (Br. 12); treats cement as a mineral which is made into concrete (*id.*, p. 8, fn. 12, and pp. 11–12); and takes the government to task for calling its mineral "limestone" (*id.*, p. 5, fn. 5). In brief, taxpayer apparently contends that it mines "cement" rather than "limestone." This is technologically surprising and, of course, contrary to the findings of both courts below (R. 171–174, 178; Pet. 21–23, 33, 37–39). But again, if accepted, it leads only to the conclusion that taxpayer is not entitled to a depletion allowance

at all. The Code does not list "cement" as a depletable mineral.

Respectfully submitted.

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